



**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:	)	
	)	
JOSEFINA MORENO,	)	
	)	
Complainant,	)	
	)	Charge No.: 2000CF0920
and	)	EEOC No.: 21BA00289
	)	ALS No.: 11450
KIMCO CORPORATION and	)	
JESUS MARTINEZ,	)	
	)	
Respondents.	)	

**RECOMMENDED ORDER AND DECISION**

On January 23, 2001, the Illinois Department of Human Rights filed a complaint on behalf of Complainant, Josefina Moreno. That complaint alleged that Respondents, Kimco Corporation and Jesus Martinez, sexually harassed Complainant.

This matter now comes on to be heard on Respondent Kimco Corporation's Motion for Summary Decision. The individual respondent, Jesus Martinez, joined in the motion without objection. Complainant has not filed any response to the motion, and the time for filing such a response has passed. The matter is ready for decision.

**FINDINGS OF FACT**

The following findings of fact were derived from the record file in this matter, including documentation filed by the corporate respondent, Kimco Corporation, in support of the motion.

1. The corporate Respondent, Kimco Corporation, filed its motion for summary decision on August 10, 2001.

2. The individual Respondent, Jesus Martinez, was given leave to adopt Kimco's motion for summary decision on August 23, 2001. Notice of Martinez's motion was served on Complainant's counsel.

3. Complainant did not appear at the motion call at which Martinez's motion was heard.

4. Complainant did not file any response to Respondents' motion and did not request additional time for such a response.

5. According to Respondents' submissions, there was only one instance of sexual activity directed toward Complainant by Jesus Martinez during the 180-day period immediately preceding the filing of her initial charge of discrimination.

6. According to Respondents' submissions, there was only one instance of sexual activity directed toward Complainant by her supervisor.

7. For purposes of the instant motion, Respondents' submissions establish the full extent of their actions during the relevant time frame.

8. Complainant filed her charge of discrimination with the Illinois Department of Human Rights on or about November 2, 1999.

#### CONCLUSIONS OF LAW

1. There are no genuine issues of material fact in this matter.

2. Respondents' actions were not sufficiently severe or pervasive to constitute sexual harassment.

3. A summary decision in favor of Respondents is appropriate in this case.

4. The complaint in this matter should be dismissed in its entirety, with prejudice.

#### DISCUSSION

This matter comes on to be heard pursuant to Respondents' motion for summary decision. A summary decision is analogous to a summary judgment in the Circuit Court. ***Cano v. Village of Dolton***, 250 Ill. App. 3d 130, 620 N.E.2d 1200 (1st Dist. 1993). A motion for summary decision should be granted when there is no genuine issue of material fact and the moving party is entitled to a recommended order in its favor as a matter of law. ***Strunin and Marshall Field & Co.***, 8 Ill. HRC Rep. 199 (1983).

The corporate Respondent, Kimco Corporation, filed its motion for summary decision on August 10, 2001. Approximately two weeks later, on August 23, the individual Respondent, Jesus Martinez, was given leave to adopt Kimco's motion. Notice of Martinez's motion was served on Complainant's counsel, but Complainant did not appear at the motion call at which Martinez's motion was heard.

Under the Commission's procedural rules, a response to a written motion may be filed "within five days after service of the motion." 56 Ill. Adm. Code, Section 5300.730(b). However,

Complainant did not file any response to Respondents' motion and did not request additional time for such a response.

Respondents submitted documentation, including a transcript of Complainant's deposition, in support of their position. Complainant provided no such documentation. Although Complainant need not prove her case at this juncture, she must provide some factual basis that would entitle her to prevail. ***Schoondyke v. Heil, Heil, Smart & Golee, Inc.***, 89 Ill. App. 3d 640, 411 N.E.2d 1168 (1st Dist. 1980). Moreover, because Complainant failed to provide evidence to contest Respondents' submissions, those submissions stand un rebutted and must be accepted as true. ***Koukoulomatis v. Disco Wheels***, 127 Ill. App. 3d 95, 468 N.E.2d 477 (1st Dist. 1984). Thus, there is no dispute as to what the facts of the case are.

According to the evidence submitted by Respondents, there was only one instance of sexual activity directed toward Complainant by Jesus Martinez during the 180-day period immediately preceding the filing of her initial charge of discrimination. Respondents' evidence also shows that there was only one instance of sexual activity directed toward Complainant by her supervisor. Since there is no other evidence in the record, for purposes of the instant motion, Respondents' submissions establish the full extent of their actions during the relevant time frame. (Since Complainant filed her initial charge of discrimination with the Illinois Department of Human Rights on

or about November 2, 1999, the relevant time frame extends back 180 days from that date.)

According to section 5/2-101(E) of the Human Rights Act (775 ILCS 5/1-101 *et seq.*), sexual harassment is defined in relevant part as "any unwelcome sexual advances or requests for sexual favors or any conduct of a sexual nature when . . . such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment." The isolated events described in Respondent's submissions do not meet that standard.

The existence of a hostile environment is measured against an objective standard. ***Kauling-Schoen and Silhouette American Health Spas***, \_\_\_ Ill. HRC Rep. \_\_\_, (1986SF0177, February 8, 1993). Isolated incidents generally do not generate a hostile environment unless they are quite severe, and unwelcome conduct which is not more than a few isolated instances will not create liability. ***Klein and Jack Schmitt Ford, Ltd.***, \_\_\_ Ill. HRC Rep. \_\_\_, (1990SF0162, January 17, 1997). Two minor incidents within a six month period are not sufficient to establish a hostile environment. As a result, it does not appear that Complainant could prevail.

Complainant's failure to respond to Respondents' motion raises one more issue. In ***Jones and Burlington Northern Railroad***, 25 Ill. HRC Rep. 101 (1986), the Human Rights Commission faced a situation in which the respondent had filed a

motion for summary decision but the complainant had filed no response. The Commission panel stated, "We will not search the record to find reasons to deny a motion. If a motion appears valid on its face, and if the other side cannot tell us why the motion should not be granted, we will grant the motion." 25 Ill. HRC Rep. at 102. The situation described in **Jones** is precisely the situation in the instant case. Accordingly, Respondent's motion should be granted.

#### **RECOMMENDATION**

Based upon the foregoing, there are no genuine issues of material fact and Respondents are entitled to a recommended order in its favor as a matter of law. Accordingly, it is recommended that Respondents' motion for summary decision be granted and that the complaint in this matter be dismissed in its entirety, with prejudice.

HUMAN RIGHTS COMMISSION

BY: \_\_\_\_\_  
MICHAEL J. EVANS  
ADMINISTRATIVE LAW JUDGE  
ADMINISTRATIVE LAW SECTION

ENTERED: June 4, 2002